[JOINT COMMITTEE PRINT]

DESCRIPTION OF TAX BILLS
(H.R. 2163 and H.R. 2809)

SCHEDULED FOR A HEARING

BEFORE THE

COMMITTEE ON WAYS AND MEANS

ON JUNE 2, 1983

PREPARED BY THE STAFF OF THE

JOINT COMMITTEE ON TAXATION

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INTRODUCTION

The Committee on Ways and Means has scheduled a public hearing on June 2, 1983, on two bills, H.R. 2163 and H.R. 2809, which have been sequentially referred to it. The bills have been favorably reported by the Committee on Merchant Marine and Fisheries. The sequential referral requires the Committee on Ways and Means to act on these two bills before July 16, 1983.

H.R. 2163, as reported by the Merchant Marine Committee on May 16, 1983 (H. Rep. 98-133, Part 1), would expand the articles subject to the 10-percent excise tax on fishing equipment, subject certain other articles used in sport fishing to a new 3-percent excise tax, modify the purposes for which the revenues from these taxes and the taxes on motorboat fuels are expended, and postpone the payment date for the tax on sport fishing equipment. H.R. 2809, as reported by the same committee on May 16, 1983 (H. Rep. 98-134, Part 1), would establish a National Fish and Wildlife Foundation to receive gifts for the benefit of the U.S. Fish and Wildlife Service, would exempt that organization from tax, and would authorize tax deductions for the value of gifts to the organization.

The first part of the pamphlet is a summary of the bills. This is followed by a more detailed description of the bills, including present law, issues, explanation of provisions, effective dates, and estimated revenue effects.

I. SUMMARY

1. H.R. 2163—As Reported, with Amendments, by the Committee on Merchant Marine and Fisheries

Expansion of Excise Tax on Fishing Equipment and Modification of Dingell-Johnson Fish Conservation and Federal Boating Safety Programs

Under present law, a manufacturers excise tax equal to 10 percent of the price is imposed on the sale of fishing rods, creels, and reels, and certain other articles (Code sec. 4161(a)). Revenues equivalent to the tax are distributed to the States in partial reimbursement of the costs they incur in approved fish restoration and management projects (the "Dingell-Johnson fund" program).

For fiscal years 1983–1988, up to $45 million per year of revenues from the excise taxes on gasoline and special motor fuels used in motorboats (secs. 4041, 4081, and 9503) are deposited in the National Recreational Boating Safety and Facilities Improvement Fund, with the balance, if any, of such revenues being deposited in the Land and Water Conservation Fund. Part of the revenue from these funds is used for marine conservation programs, and part is used for recreational boating programs.

The bill would expand the articles subject to the 10-percent excise tax on sport fishing equipment and impose a new 3-percent tax on electric trolling motors and certain fish finders. The time for paying the 10-percent excise tax would be extended, with payments being required on a quarterly basis. Finally, the bill would alter the financing sources and expenditure purposes for the three funds.

The amendments to the fishing excise tax would be effective with respect to articles sold after December 31, 1983; the other amendments would be effective on October 1, 1983.

2. H.R. 2809—As Reported, with Amendment, by the Committee on Merchant Marine and Fisheries

Establishment of the National Fish and Wildlife Foundation

Under present law, a charitable organization is exempt from tax if it meets certain specific Internal Revenue Code requirements (Code sec. 501). With certain exceptions (e.g., churches), organizations are exempt only if the Internal Revenue Service makes a determination of exempt status following submission of an application on behalf of the organization (sec. 508). Contributions to the organization for use in carrying out its exempt function generally are deductible by the donor for income, estate, and gift tax purposes (secs. 170, 2055, and 2522).

Organizations maintain their tax-exempt status and eligibility to receive tax-deductible gifts only as long as statutory criteria are satisfied. An organization otherwise exempt from tax is nevertheless taxable on its unrelated business income, and certain otherwise exempt organizations may incur liability for other special taxes if specified actions are taken or certain conditions exist.

The bill would establish a new foundation, The National Fish and Wildlife Foundation. An amount, not to exceed $1 million over a 10-year period, would be authorized to be made available from the Federal Treasury to the Foundation for administrative expenses and for a one-for-one matching program with private contributions for use in carrying out its exempt purpose.

The Foundation would not be an agency or establishment of the Federal Government; however, donors of property to the Foundation would be treated as making tax-deductible gifts to the United States. The purpose of the Foundation would be to accept and manage private donations for the benefit of the United States Fish and Wildlife Service. Income realized on all transactions with the Foundation would be exempt from all Federal, State, and local taxation. The Foundation would not be required to meet the Internal Revenue Code requirements applicable to other similar charitable organizations.

II. DESCRIPTION OF H.R. 2163—AS REPORTED, WITH AMENDMENTS, BY THE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Expansion of Excise Tax on Fishing Equipment and Modification of Dingell-Johnson Fish Conservation and Federal Boating Safety Programs

A. Revenue Provisions

Present Law

1. Excise tax on fishing equipment

An excise tax equal to 10 percent of the price is imposed on the sale of fishing rods, creels and reels, and on artificial lures, baits, and flies (including parts and accessories of such articles) by a manufacturer, producer, or importer (Code sec. 4161(a)).

Revenues equivalent to the 10-percent tax on fishing equipment are distributed to the States in partial reimbursement of the costs they incur in approved fish restoration and management projects, discussed below under the explanation of the Dingell-Johnson fund program.

2. Time for payment of tax

Treasury Department regulations require returns of manufacturers excise taxes, including the tax on the sale of fishing equipment, to be filed quarterly, unless the Treasury requires more frequent filing by a taxpayer (Treas. Reg. sec. 48.6011(a)-1). Quarterly returns are due on the last day of the first month after the end of the quarter (Treas. Reg. sec. 48.6071(a)-1).

Although most Federal excise tax returns are filed on a quarterly basis, Treasury regulations generally require monthly, or semimonthly, payment of the tax (Treas. Reg. sec. 48.6302(c)-1). If a taxpayer is liable in any month for more than $100 of manufacturers excise tax and is not required to make semimonthly deposits, the taxpayer must deposit the amount on or before the last day of the next month at an authorized depository or at the Federal Reserve Bank serving the area in which the taxpayer is located.

If a taxpayer had more than $2,000 in manufacturers excise tax liability for any month of a preceding calendar quarter, such taxes must be deposited for the following quarter (regardless of amount) on a semimonthly basis. The taxes must be deposited by the ninth day following the semimonthly period for which they are deposited.

Table 1 shows the return requirements and payment requirements for selected Federal excise taxes.

TABLE 1.—SCHEDULE OF RETURN REQUIREMENTS AND PAYMENT PERIODS FOR SELECTED FEDERAL EXCISE TAXES

Tax	Return Period	Tax Payment Period	Float Time (days) [1]
Manufacturers and retailers taxes			
Motor fuels, tires and tubes, gasoline, special fuels, sporting good, diesel fuel, new trucks and trailers.	Quarterly (last day of month after end of quarter).	At least $100 of total excise taxes—monthly on last day of succeeding month, last installment with return.	30
		More than $2,000 of total excise taxes in any month of preceding quarter—seminonthly.	[2] 9
Wagering	Monthly (15 days after end of month).	With return	15
Tobacco products	Semimonthly (25 days after end of period).	At time of removal unless have deferral bond—then with return.	25
Distilled spirits	Semimonthly (30 days after end of period).	At time or removal unless have deferral bond—then with return.	30
Beer and wine	Semimonthly (15 days (or 3 days) after end of period).	At time of removal unless have deferral bond—then with return.	15

TABLE 1.—SCHEDULE OF RETURN REQUIREMENTS AND PAYMENT PERIODS FOR SELECTED FEDERAL EXCISE TAXES—CONTINUED

Tax	Return Period	Tax Payment Period	Float Time (days) [1]
Facilities and services taxes			
Telephone, airlines.	Quarterly (last day of 2nd month following quarter).	At least $100 of total excise taxes—monthly on last day of succeeding month, last installment with return.	30
		More than $2,000 of total excise taxes in any month of preceding quarter—3 banking days after close of semimonthly period.	3

[1] Float time is the delay permitted between the end of a tax payment period and the date the tax must be paid.

[2] Certain gasoline manufacturers are permitted 14 days if payment is made by wire transfer.

3. Taxes on motorboat fuels

Taxes at a rate of 9 cents per gallon are imposed on gasoline and special motor fuels used in motorboats. For fiscal years 1983–1988, up to $45 million per year of the revenues from these taxes are transferred from the Highway Trust Fund into the National Recreational Boating Safety and Facilities Improvement Fund (the "Boating Safety Fund"), with the balance, if any, going to the Land and Water Conservation Fund.

4. Tariffs on imported fishing tackle and yachts and pleasure craft

Duties at varying rates are imposed on the importation of specified articles of fishing tackle (19 U.S.C. 1202). Duties are also imposed on the importation of certain yachts and pleasure craft (19 U.S.C. 1202). Revenues from these import duties are deposited in the general fund of the Treasury.

Issues

The revenue provisions of the bill raise several issues, including the following:

First, should the list of articles of fishing equipment subject to Federal excise tax be expanded?

Second, should the rate of tax on some articles be lower than the rate applicable to sport fishing equipment generally?

Third, should the time for payment of the excise tax on sport fishing equipment be extended, and if so, should the time permitted be greater than that allowed manufacturers of other articles subject to Federal excise taxes?

Fourth, should additional Federal taxes be imposed to fund State, as opposed to Federal, programs?

Fifth, should revenues from duties on imported yachts and pleasure craft be used to support the Dingell-Johnson program when similar domestically manufactured articles are not subject to a tax for support of that program?

Explanation of Revenue Provisions

1. Excise taxes on sport fishing equipment

The bill would expand the articles subject to the 10-percent manufacturers excise tax on sport fishing equipment to include articles not presently subject to tax. The additional articles of sport fishing equipment that would be subject to the 10-percent excise tax would include, for example, fabricated rods, poles, and component parts of such rods and poles; organic, synthetic, and metallic lines; underwater spear guns and fishing spears; bags and baskets designed to hold fish; portable bait containers; landing nets; hoops; gaff hooks; rodholders; preserved packaged bait; ice augers; ice spuds, manufactured ice houses; and other items designed for use in recreational fishing.

In addition, the bill would impose a new 3-percent manufacturers excise tax on the sale of electric trolling motors and fish finders (other than digital depth finders).

2. Time for payment of excise taxes

The bill would extend the time for paying the 10-percent excise tax on sport fishing equipment. Under the bill, payment of the excise tax would be required on a quarterly basis as follows:

a. March 31, in the case of articles sold during the quarter ending the previous December 31;

b. June 30, in the case of articles sold during the quarter ending the previous March 31;

c. September 24, in the case of articles sold during the quarter ending the previous June 30; and

d. On a date prescribed in Treasury regulations in the case of articles sold during the quarter ending September 30.

The bill would not amend the time prescribed under present law for filing returns of manufacturers excise taxes or the time for payment of such taxes on articles other than sport fishing equipment. The additional time would not apply to the new 3-percent tax on electric trolling motors and certain fish finders.

3. Reallocation of motorboat fuels tax receipts

Revenues from the excise taxes on gasoline and special motor fuels would be reallocated between the Dingell-Johnson fund pro-

gram and the Boating Safety Fund. This reallocation is explained more fully in Part B, Fund Expenditure Purposes, following.

4. Transfer of tariff revenues on fishing tackle and yachts and pleasure craft

Under the bill, revenues from the import duties on fishing tackle and on yachts and pleasure craft would be dedicated to the Dingell-Johnson fund program rather than being deposited in the general fund of the Treasury.

B. Fund Expenditure Purposes

Present Law and Background

1. Fish Restoration and Management Projects ("Dingell-Johnson" fund Program)

Overview

The Act of August 9, 1950 (commonly referred to as the Dingell-Johnson Act, so named after the original sponsors of the Act), provided for cooperation between the Federal Government and State fish and game departments. Although the Act did not establish a true trust fund in the Treasury, appropriations are linked to specific tax revenues. Limits are placed on State expenditures of Federally appropriated funds until the State has passed laws governing the conservation of fish and the State meets other requirements.

Financing source and expenditure purposes

To carry out fish restoration and management projects, there is authorized to be appropriated (under 16 U.S.C. sec. 777b) an amount equal to the revenue accruing from the 10-percent excise tax on certain fishing equipment, described above in Part II.A. The appropriation for any fiscal year continues to be available for the succeeding fiscal year. If the amount apportioned to any State is unexpended or unobligated at the end of the period for which it is available, this amount is then authorized to be made available for expenditure by the Secretary of the Interior on the research program of the U.S. Fish and Wildlife Service.

Up to 8 percent of each annual appropriation is available to the Secretary of the Interior to defray expenses of administering the program and of aiding in the formulation, adoption, or administration of any compact between two or more States for the conservation and management of migratory fishes in marine or fresh waters.

Any State that wishes to receive any of these appropriations must submit to the Secretary of the Interior a program or project for fish restoration. Amounts are appropriated to reimburse States for up to 75 percent of the cost of approved projects. Approved projects include research into problems of fish management and culture, surveys and inventories of fish populations, restocking waters with food and game fishes according to natural areas, and acquisition and improvement of fish habitat that provide access for public use. The amount of assistance for these programs is determined by statutory formula.

The State allocations are apportioned as follows:

a. 40 percent in the ratio which the area of each State, including coastal and Great Lakes waters, bears to the total area of all the States.

b. 60 percent in the ratio which the number of persons holding licenses to fish for sport or recreation in the State in the second fiscal year preceding the fiscal year for which the apportionment is made bears to the number of such persons in all the States.

No State is permitted to receive less than one percent or more than 5 percent of the total amount apportioned. Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands can also be appropriated limited amounts of these revenues.

2. National Recreational Boating Safety and Facilities Improvement Fund ("Boating Safety Fund")

Overview

1980 Act.—The National Recreational Boating Safety and Facilities Improvement Fund ("Boating Safety Fund") was enacted in 1980 (P.L. 96-451) to provide financing (up to $20 million per year from the motorboat fuels tx revenues) for the Boating Safety Fund for fiscal years 1981 through 1983. Before this Act, all funds attributable to the excise taxes on gasoline and special motor fuels used in motorboats were transferred periodically from the Highway Trust Fund into the Land and Water Conservation Fund.

1982 Act.—The Highway Revenue Act of 1982 (Title V of the Surface Transportation Assistance Act of 1982; P.L. 97-424) extended the Boating Safety Fund through fiscal year 1988, and increased the amounts to be transferred into the Fund (as indicated below).

Financing source and expenditure purposes

Financing source.—The Secretary of the Treasury is authorized to pay from the Highway Trust Fund into the Boating Safety Fund certain amounts attributable to the motorboat fuels taxes received on or after October 1, 1980, and before October 1, 1988. Before enactment of the Highway Revenue Act of 1982, the aggregate amount transferred to the Boating Safety Fund during each fiscal year 1981-1983 (the length of the Fund under prior law) could not exceed $20 million. Also, no amount could be transferred if such transfer would result in increasing the amount in the Fund to a sum in excess of $20 million.

The Highway Revenue Act of 1982 increased to $45 million the limitation on fiscal year amounts which may be transferred into the Boating Safety Fund and the maximum amount to be held by the Fund. The 1982 Act also extended the Fund through September 30, 1988. Any excess of motorboat fuels tax receipts will continue to be transferred into the Land and Water Conservation Fund (through September 30, 1988).

Purposes and allocation.—Before enactment of the Surface Transportation Assistance Act of 1982, amounts in the Boating Safety Fund were available as provided in appropriation acts, for

making expenditures after September 30, 1980, and before April 1, 1984.

Title IV of the 1982 Act amended Public Law 96–451 to provide the Secretary of Transportation with authority to contract with the States to implement and administer the Boating Safety Fund programs. Under the 1982 Act, approval of specific elements of a State program is deemed a contractual obligation of the United States. The Secretary of Transportation may allocate and distribute amounts from the Fund to any State that has a State recreational boating safety and facilities improvement program if that program meets certain standards and the State provides matching funds. One-third of the revenue available for allocation and distribution is to be allocated for recreational boating safety programs and two-thirds is to be allocated for recreational boating facilities improvement programs, beginning with fiscal year 1983.

Available Boating Safety Fund amounts are to be allocated and distributed to the States for recreational boating safety programs and facility improvement programs as follows: 1/3 allocated equally among eligible States; 1/3 allocated among eligible States who maintain an approved State vessel numbering system according to number of vessels; and 1/3 allocated to eligible States according to the amount of State funds expended or obligated for State boating safety programs or boating facility improvement programs.

Financial status of the Boating Safety Fund

Table 2 contains data on the Boating Safety Fund's actual receipts for fiscal year 1982 and as projected for fiscal years 1983 and 1984, as well as the Fund's balance at the end of the fiscal years.

TABLE 2.—AMOUNTS AVAILABLE FOR APPROPRIATION IN THE NATIONAL RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT FUND

[In millions of dollars]

	1982 actual	1983 (estimate)	1984 (estimate)
Unappropriated balance, start of year	20	20	45
Collections (receipts): Recreational Boating Safety and Facilities Act of 1980, as amended: Motorboat fuels tax		30	15
Total available for appropriation	20	50	60
Appropriation			−15
Appropriation (proposed supplemental)		−5	
Unappropriated balance, end of year	20	45	45

TABLE 2.—AMOUNTS AVAILABLE FOR APPROPRIATION IN THE NATIONAL RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT FUND—CONTINUED

[In millions of dollars]

	1982 actual	1983 (estimate)	1984 (estimate)
Status of unfunded contract authority:			
Unfunded balance, start of year			40
Contract authority		45	45
Appropriation to liquidate contract authority		−5	−15
Unfunded balance, end of year		40	70

Source: U.S. Budget Appendix, Fiscal Year 1984.

[1] No tax revenues were transferred to the Boating Safety Fund during fiscal year 1982 due to the $20 million limit on the Fund Balance; none of this amount was appropriated during fiscal year 1982.

[2] The Fiscal Year 1983 Supplemental Appropriation bill (H.R. 3069; H. Rep. No. 98-207), as passed by the House on May 25, 1983, includes a $5 million limit on fiscal year 1983 obligations for recreational boating safety assistance pursuant to section 421 of Public Law 97-424 (contract authority), and prohibits any obligation for recreational boating facilities improvements.

3. Land and Water Conservation Fund

Overview

On September 3, 1964, the Congress enacted Public Law 88-578, which established the Land and Water Conservation Fund ("LWCF") as a separate account in the Treasury, effective January 1, 1965, to be funded in part with user fees from all Federal recreational areas. In 1968, Public Law 90-401 eliminated the system of user fees for all Federal recreation areas that had been included previously in the law, effective December 31, 1971.[1] The 1968 Act also authorized additional appropriations of amounts necessary to make the income of the LWCF not less than $200 million for each of the five fiscal years beginning July 1, 1968, and ending June 30, 1973. To the extent that appropriated sums were insufficient to reach the required amounts, an amount sufficient to cover the shortfall was to be credited to the Fund from revenues due and payable to the United States for deposit in the Treasury as miscellaneous receipts under the Outer Continental Shelf Lands Act.

In 1981, Public Law 96-514 provided that revenues from recreation fee collections should again be deposited into the Fund, effective January 1, 1981.

[1] A limited system of fees was later reinstated, and for several years these revenues generally were covered into a special account in the Treasury to be administered in conjunction with, but separately from, the LWCF.

In 1970, Public Law 91-485 increased the authorized appropriations to not less than $300 million for fiscal years 1971 through 1989. As a result of amendments in 1976 and 1977, the amounts for fiscal years 1978 through 1989 were increased to $900 million (P.L. 94-273, P.L. 94-422 and P.L. 95-42).

In 1980, Public Law 96-451 provided for the transfer to the Boating Safety Fund from the LWCF during fiscal years 1981-1983 of an amount not to exceed $20 million per year of revenues from motorboat fuels taxes (increased in 1982 to $45 million).

Financing sources and expenditure purposes

Financing sources.—Present law (16 U.S.C. 460*l*5-) provides for deposit of the following amounts in the LWCF:

a. All proceeds, except those committed under other statutes, received from any disposal of surplus real property and related personal property under the Federal Property and Administrative Services Act of 1949, as amended;

b. Except as noted previously, an amount equivalent to the 9-cents-per-gallon taxes on gasoline and special motor fuels used in motorboats;

c. Revenues from Federal recreation fee collections (since January 1, 1981);

d. Amounts necessary to make the income of the Fund not less than $900 million for fiscal year 1978 and for each fiscal year thereafter through September 30, 1989 (if appropriated); and

e. To the extent that the appropriated sums are not sufficient to make the total annual income of the Fund equivalent to the amounts stated above, an amount sufficient to cover the remainder from miscellaneous receipts under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.).

Purposes and allocation.—The general purposes of the LWCF are to (1) to provide funds for and authorize Federal assistance to the States in planning, acquisition, and development of needed land and water areas and facilities, and (2) to provide funds for the Federal acquisition and development of certain lands and other areas.

Monies in the Fund are available for expenditures as provided in appropriation acts. Not less than 40 percent of annual appropriations are to be used for Federal purposes; these include activities and programs of the Bureau of Land Management, the Forest Service, the Fish and Wildlife Service, and the National Park Service. The remainder of funds appropriated are apportioned among the States on the basis of statutory formula and criteria.

Financial status of the Fund

Table 3 contains data on the LWCF's actual receipts for fiscal year 1982 and estimated for fiscal years 1983 and 1984, as well as the Fund's balance at the end of the fiscal years.

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TABLE 3.—AMOUNTS AVAILABLE FOR APPROPRIATION IN THE LAND AND WATER CONSERVATION FUND

[In millions of dollars]

	1982 (actual)	1983 (est.)	1984 (est.)
Unappropriated balance, start of year	1,117.6	1,837.6	2,510.7
Collections (offsetting receipts):			
Land and Water Conservation Fund Act:			
Recreation fees	23.6	26.5	26.5
Administration's proposed legislation			−26.5
Surplus property sales	26.2	401.0	578.0
Administration's proposed legislation		401.0	−578.0
Motorboat fuels taxes	30.3	9.0	49.0
Outer Continental Shelf Lands Act	819.9	463.5	246.5
Administration's proposed legislation		401.0	604.5
Total available for appropriation	2,017.6	2,737.6	3,410.7
Appropriation	−179.9	226.9	128.9
Unappropriated balance, end of year	1,837.6	2,510.7	3,281.9
Special account (P.L. 95–42, sec. 1):			
Unappropriated balance, start of year	142.6	142.6	142.6
Total available for appropriation	142.6	142.6	142.6
Appropriation			
Unappropriated balance, end of year	142.6	142.6	142.6

Source: U.S. Budget Appendix, Fiscal Year 1984.

Issues

The principal issues presented by the expenditure provisions of the bill are—

First, should the allocation of revenues among the Dingell-Johnson fund, the Boating Safety Fund, and the Land and Water Conservation Fund be modified?

Second, should these funds be established as true trust funds in the Treasury, and if so, should the operative provisions of the funds be transferred to the Trust Fund Code of the Internal Revenue Code for efficiency of administration and oversight?

Explanation of Provisions

1. Fish Restoration and Management Projects ("Dingell-Johnson" fund Program)

The Dingell-Johnson fund program would be amended by the bill to require each coastal State to allocate monies equitably among marine fish projects and freshwater fish projects based upon the relative proportions that the estimated number of resident marine and freshwater anglers bear to the estimated total number of resident anglers in the State. The term coastal State as defined in the bill includes the 23 States that border the Atlantic and Pacific Oceans and the Gulf of Mexico, Hawaii, and five United States island possessions.

The amounts authorized for appropriation for the purposes of the fund would include: (1) receipts from the 10-percent manufacturers excise tax on sport fishing equipment (as expanded under the bill); (2) motorboat fuels tax receipts not dedicated to the Boating Safety Fund, i.e., the excess amount that is transferred into the Land and Water Conservation Fund under present law; and (3) receipts from import duties imposed on fishing tackle and yachts and pleasure craft.

Up to 6 percent of the annual appropriation for the program could be used by the Secretary of the Interior for expenses in administering the fund and assisting in interstate compacts relating to migratory fishes in marine or fresh waters (a decrease from 8 percent under present law).

The Secretary of the Interior could agree to finance up to 75 percent of the initial costs of land (or interests in land) and the construction of structures or facilities, and the Secretary could agree to finance up to 75 percent of the remaining costs of such projects as deemed necessary. The liability of the United States in any such agreement would be contingent upon the continued availability of funds for the purposes of the fund.

States would be required to allocate 10 percent of the revenues allocated to them to pay up to 75 percent of the costs of facilities that create, or add to, public access to U.S. waters and improve the waters for recreational boating purposes.[2] In effect, the excess motorboat fuels tax revenues made available for the Dingell-Johnson fund program (revenues which currently go to the Land and Water Conservation Fund) would finance boating facilities, instead of such facilities being financed under the Boating Safety Fund.

Additionally, up to 10 percent of the revenues apportioned to a State could be used to pay an amount not exceeding 75 percent of

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[2] The Merchant Marine Committee Report (at pp. 17–18) indicates that such facilities would include, but not be limited to: launching facilities; docking facilities; breakwaters; and fishing and boating lakes and ponds (provided motorboats are permitted). Also, funds would be available for such amenities as fish cleaning stations, restrooms, and parking areas. In addition, engineering costs, as well as environmental assessment and permit applications, could be included in the project costs.

the costs of an aquatic resource education program to increase public understanding of the Nation's water resources and associated aquatic life forms. The non-Federal share of these costs could not be derived from other Federal grant programs.

2. National Recreational Boating Safety and Facilities Improvement Fund ("Boating Safety Fund")

The bill would continue the present law transfer of up to $45 million per year through fiscal year 1988 of amounts equal to motorboat fuels tax revenues from the Highway Trust Fund to the Boating Safety Fund. However, the bill would revise the allocation of Fund monies by removing boating facilities improvement as an expenditure purpose.

The bill would rename the Boating Safety Fund as the National Recreational Boating Safety Fund. This would be consistent with deletion of facilities improvement from the expenditure guidelines. In addition, the bill would extend authority for expenditures from the Fund from March 31, 1984 through March 31, 1989.

Under the bill, budget authority would be provided for fiscal years 1984 through 1988 for two-thirds of the amount transferred each fiscal year to the Boating Safety Fund (i.e., up to $30 million per year). The budget authority could not exceed liquidation of contract authority provided in appropriations acts for each of the fiscal years. The amounts would be available for allocation among State recreational boating safety programs under the following nonexclusive guidelines:

a. Providing facilities, equipment, and supplies for boating safety education and law enforcement, including purchase, operation, maintenance, and repair;

b. Training personnel in skills related to boating safety and the enforcement of boating safety laws and regulations;

c. Providing public boating safety education, including educational programs and lectures, to the boating community and the public school system;

d. Acquiring, constructing, or repairing public access sites used primarily by recreational boaters;

e. Conducting boat safety inspections and accident investigations;

f. Establishing and maintaining facilities for, and providing emergency or search-and-rescue assistance;

g. Establishing and maintaining waterway markers and other appropriate aids to navigation; and

h. Providing State boat numbering or titling programs.

The guidelines in the bill would make one major change from existing guidelines: item d., above, adds "acquiring" to constructing and repairing public access sites as a major purpose of the Fund.

The remaining one-third of the amounts transferred to the Boating Safety Fund (i.e., up to $15 million per fiscal year) would become available to the recreational boating safety services account of the United States Coast Guard, including amounts for services provided by the Coast Guard Auxiliary.

Revenues made available for expenditure for purposes of the Boating Safety Fund would remain available until spent. The portion of monies available to State programs would be deemed to

have been spent only if a sum equal to the total amounts authorized had been obligated for the fiscal year in question and all previous years.

3. Land and Water Conservation Fund

Under the bill, revenues from the 9-cents-per-gallon taxes on gasoline and special fuels used in motorboats in excess of the $45 million transferred to the Boating Safety Fund would no longer be transferred to the Land and Water Conservation Fund. Instead, as indicated above, these revenues would be transferred to the general fund and made available to the Dingell-Johnson fund program.

C. Effective Dates

The amendments to the excise tax on sport fishing equipment would apply with respect to articles sold after December 31, 1983.

The amendments relating to sources of revenues for and expenditure purposes of the Dingell-Johnson Fund program, the Boating Safety Fund, and the Land and Water Conservation Fund would be effective on October 1, 1983.

D. Revenue Effect

The estimated revenue effects of the amendments to the excise tax on fishing equipment are shown below.

[In million of dollars]

	Fiscal years—				
	1984	1985	1986	1987	1988
Gross tax receipts.....	9	13	13	14	14
Net revenue effect after offsets against income tax	6	10	10	11	11

In addition, it is estimated that the provision on certain tariff revenues would cover approximately $20 million per year to the Dingell-Johnson fund program from the general fund.

III. DESCRIPTION OF H.R. 2809—AS REPORTED, WITH AMENDMENT, BY THE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Establishment of the National Fish and Wildlife Foundation

Present Law

1. Rules governing charitable organizations

Under present law, certain charitable, religious, and educational organizations generally are not subject to Federal income tax (Code sec. 501). Generally, these organizations are not enumerated individually in the statute. Rather, the organizations must apply to the Internal Revenue Service for a determination of exempt status (sec. 508).

Organizations otherwise exempt from tax are nonetheless subject to tax on their unrelated business income (secs. 511-514). The tax on unrelated business income is determined as if the organization were a corporation. In general, the term unrelated business income is defined as income from a trade or business regularly carried on by the organization, which trade or business is not substantially related to the exempt purpose of the organization.

Exempt charitable organizations are of two broad types, public charities and private foundations. Private foundations are subject to special rules governing their operation and investments. For example, special excise taxes are imposed on acts of self-dealing (sec. 4941), on failure to distribute income (sec. 4942), on excess business holdings (sec. 4943), for making investments that jeopardize the organization's charitable purpose (sec. 4944), and on certain expenditures (sec. 4945) in the case of private foundations. Also, private foundations are subject to a 2-percent excise tax on net investment income.

2. Tax treatment of donations to exempt organizations

Valuation rules and types of eligible property interests

In general, donors of property are entitled to claim a deduction for the fair market value of property donated to charitable organizations, the United States, or a State or local government. The deduction is available in determining income, estate, and gift tax (secs. 170, 2055, and 2522).

Certain types of gifts are subject to special restrictions, either as to the amount deductible or as to types of property interests for which a deduction is permitted. For example, one of these restrictions provides that the amount of gain that would be taxed as ordinary income if the donated property were sold cannot be deducted (sec. 170(e)(1)). Additionally, a contribution of less than the donor's entire interest in the property generally does not give rise to a de-

duction (income, estate, or gift tax) unless the gift takes the form of an interest in a unitrust, annuity trust, or a pooled income fund (sec. 170(f)(3)). Exceptions to the partial interest rule are provided for remainder interests in farms or personal residences, gifts of undivided portions of the donor's entire interest in the property, and, in the case of the income tax, for gifts of qualified conservation easements.

Qualified conservation easements are real property interests donated in perpetuity for—

a. The preservation of land areas for outdoor recreation by, or for the education of, the general public;

b. The protection of a natural habitat of fish, wildlife, plants, or a similar ecosystem;

c. The preservation of open space (including farmland and forest land) where such preservation is—

(1) For the scenic enjoyment of the general public, or

(2) Pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit; or

d. The preservation of an historically important land area or a certified historic structure (sec. 170(h)).

Percentage limitations on aggregate gifts

Present law also imposes percentage limitations on the income tax deduction allowable to an individual in any year. In the case of gifts to private foundations, the maximum annual deduction is 20 percent of the individual's "contribution base" while the value of gifts to other qualified charitable organizations is limited to the excess of 50 percent of the contribution base over the value of deductions claimed for gifts to private foundations. An individual's contribution base is his or her adjusted gross income (net of any net operating loss carryback to the year) (sec. 170(b)(1)). Corporations may not deduct any amount in excess of 10 percent of their taxable income (determined with certain modifications) in any taxable year. (sec. 170(b)(2)).

There are no percentage limitations on the amount that may be claimed as a charitable deduction in determining estate and gift tax.

3. Description of the National Park Foundation

The National Park Foundation was created by Congress in 1967 [3] to accept and administer gifts for the benefit of the National Park Service. The Foundation is authorized to accept and administer gifts of real or personal property, or income from property, including restricted or encumbered gifts. Additionally, the Foundation may sell, lease, or otherwise dispose of donated property or income, unless prohibited by the donor.

The National Park Foundation and its income or property, and transactions relating to its income or property, are exempt from all Federal, State, and local taxation.[4] However the Foundation may,

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[3] P.L. 90209, December 18, 1967, 81 Stat. 656. The Foundation replaced the former National Park Trust Fund Board.

[4] P.L. 90-209, December 18, 1967, sec. 8 (16 U.S.C. sec. 191).

in its discretion, contribute toward the costs of local government in amounts not in excess of those which it would be obligated to pay if it were not tax-exempt. Contributions, gifts and other transfers to or for the use of the Foundation are regarded as contributions to or for the use of the United States.

Issues

The principal issue is whether a Federally chartered foundation should be established with appropriated matching funds for the benefit of the U.S. Fish and Wildlife Service to carry out activities similar to those activities performed by that Service which currently are financed entirely through appropriations.

A second issue is whether the regular Federal tax rules governing private foundations should apply to any National Fish and Wildlife Foundation that might be established by the Congress.

Explanation of Provisions

1. Establishment and purposes of the Foundation

The bill would establish a National Fish and Wildlife Foundation ("Foundation") as a charitable, not-for-profit organization. The Foundation would not be considered an agency or establishment of the United States Government.

The general purposes of the Foundation would be to encourage, accept, and manage private donations (including gifts of property) for the benefit of, or in connection with, the activities and services of the U.S. Fish and Wildlife Service, and to conduct such other activities as would further the conservation and management of fish and wildlife resources of the United States, and its territories and possessions.

2. Organization and operation of the Foundation

The Foundation would have a 9-member Board of Directors appointed by the Secretary of the Interior. The Directors would serve 6-year terms, with a 2-term limit. The Report of the Committee on Merchant Marine and Fisheries states that the Secretary should appoint Directors that represent the major fish and wildlife conservation constituencies. Also, the Director of the U.S. Fish and Wildlife Service would serve as a non-voting and ex-officio member of the Board.

The Board of Directors would appoint a Secretary of the Board, who would be the chief operating officer, and other employees as deemed necessary. None of the Foundation employers or officers could be paid in excess of a GS–18 Federal employee equivalent. Directors would serve without pay, but could be reimbursed for actual and necessary expenses incurred in the performance of their Foundation duties.

The Foundation would have the powers accorded to a corporation acting as a trustee in the District of Columbia, and would be required to adhere to the laws governing nonprofit corporations in the District of Columbia.

The Foundation would have the ability to accept, receive, and solicit gifts or bequests, and such gifts could be in any form such as

money, trusts, securities, real or personal property, or income therefrom. The Foundation also would have authority to manage or dispose of all donated property. In addition, the Foundation would have authority to raise money in the capital markets using debt instruments such as bonds, or to borrow from a lending institution. The Federal Government would not be responsible for any debt incurred by the Foundation.

A gift of real property to the Foundation could include fee title to the property, easements or other preservation mechanisms. A gift could be accepted by the Foundation even if it had restrictions, provided that the Foundation benefitted from the donation in the short or long term.

Further, no lands or waters, or interests therein, that were owned by the Foundation and were determined by the Director of the U.S. Fish and Wildlife Service or the Migratory Bird Conservation Commission to be valuable for purposes of fish and wildlife conservation or management would be subject to condemnation by State or local governments.

3. Tax treatment of the Foundation

The bill provides that the Foundation and any income or property received or owned by it, and all transactions relating to such income or property, would be exempt from all Federal, State, and local taxation. Any contributions, donations or other transfers made to the Foundation would be treated as a transfer to the United States. In addition, the conveyance of any qualified real property interest to the Foundation would be deemed to further a governmental conservation policy and qualify for income tax deduction under Code section 170(h). It is unclear under the bill whether the restrictions of section 170(h) governing income tax deductions for gifts of conservation easements would apply in the case of gifts to the Foundation.

4. Authorization of appropriations

The bill would authorize appropriation of up to $1 million over the 10-year period beginning October 1, 1983, to the Department of the Interior to be used to match private contributions to the Foundation and to provide administrative services to the Foundation.

5. Administrative services and support

Under the bill, the Secretary of the Interior would have the authority to provide personnel, either on detail or assignment, to the Foundation to help meet its operational needs for a period of 5 years from the date of enactment. The Secretary could also provide the Foundation with facilities and other administrative support. The Secretary could accept reimbursement from the Foundation for services provided to it.

6. Audits and report requirements

The Foundation would be required to publish an annual audit, to be performed by an independent certified public accountant. The Foundation would also be subject to audits by U.S. Government agencies, and the Foundation would be required to transmit an

annual financial report to the Congress, as well as a statement explaining its activities for the year.

Effective Date

The provisions of the bill generally would be effective on the date of enactment, except that the authorization of appropriations would be effective beginning October 1, 1983.

Revenue Effect

In its present form, this bill would reduce budget receipts by substantial, but indeterminate, amounts annually. However, the staff understands that it was the intent of the sponsors of the bill not to exempt from taxation gains realized from the sale of property to the Foundation and not to exempt donations of conservation easements to the Foundation from the requirements of code section 170(h). Consequently, if the bill were amended to reflect this intent, it is estimated that it would reduce budget receipts by a relatively small amount, probably less than $5 million annually.